



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
 75 Hawthorne Street
 San Francisco, CA 94105

Certified Mail: 7012 1640 0001 2191 3435
 Return Receipt Requested

JUL 31 2015

INFORMATION REQUEST

Newmont USA Limited
 Thomas R. Kerr, President
 6363 South Fiddlers Green Circle, Suite 800
 Greenwood Village, CO 80111

Re: Request for Information – Cerrillos Land Company and Mineral Rights
 Haystack Mines Site, McKinley County, New Mexico

Dear Mr. Kerr:

This letter seeks your cooperation in providing information and documents relating to historical operations of uranium mining at the Haystack Mines Site ("the Site"), McKinley County, New Mexico, partly on the Navajo Nation. This request is for information you, your predecessor corporation(s) and/or affiliated corporation(s) may have pertaining to the abandoned uranium mine sites located within and around the Site. The United States Environmental Protection Agency ("EPA") is spending public funds to oversee the investigation of and respond to actual and threatened releases of hazardous substances within the Site. EPA is involved in this investigation to determine the nature and extent of contamination, to assess the effects of contamination on the environment and human health and to identify activities and parties that contributed to the contamination.

We encourage you to give this matter your immediate attention and request that you provide a complete and truthful response to this Information Request and attached questions (Enclosure B) within thirty (30) calendar days of your receipt of this letter.

The Site is located in and around NW ¼ Section 19, Township 13N, Range 10W; SW ¼ Section 18, Township 13N, Range 10W; SE ¼ Section 13, Township 13N, Range 11W; and NE ¼ Section 24, Township 13N, Range 11W. See Attachment 1 for a site map.

EPA evaluated information obtained through its investigation and has determined that Cerrillos Land Company previously held the mineral rights associated with Section 19, Township 13N, Range 10W. It also appears that Newmont USA Limited is the successor to Cerrillos Land Company, as a result of the following events:

- i. Cerrillos Land Company was incorporated in Delaware on 3/21/1983 and merged into its parent company Western Rock Products, Inc. on 3/24/1993.
- ii. Western Rock Products, Inc. merged into Santa Fe Pacific Minerals Corporation on 5/26/1993.
- iii. Santa Fe Pacific Mineral Corporation changed its name to Santa Fe Gold Corporation on 6/30/1993.
- iv. Santa Fe Gold Corporation merged into Newmont Gold Company on 12/29/1999.
- v. Newmont Gold Corporation changed its name to Newmont USA limited on 2/22/2002 and 3/3/2002 with the Secretary of States in Delaware and New Mexico respectively.

On July 29th, 1991, EPA issued an Administrative Order pursuant to Section 106 of CERCLA, 42 U.S.C. Section 9606(a), to the Cerrillos Land Company, Santa Fe Pacific Railroad Company, and the Atchison, Topeka & Santa Fe Railway. In response to the Administrative Order, site work was performed by a contractor for Cerrillos Land Company under EPA oversight. See Attachment 2.

Under Section 104(e) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. 9604(e), as amended, EPA has broad information gathering authority which allows EPA to require persons to furnish information or documents relating to:

- A. The identification, nature, and quantity of materials which have been or are generated, treated, stored, or disposed of at a vessel or facility or transported to a vessel or facility.
- B. The nature or extent of a release or threatened release of a hazardous substance or pollutant or contaminant at or from a vessel or facility.
- C. Information relating to the ability of a person to pay for or perform a cleanup.

While EPA seeks your cooperation in this investigation, compliance with the Information Request is required by law. Please note that false, fictitious, or fraudulent statements or representations may subject you to civil or criminal penalties under federal law, and noncompliance with this request could result in EPA seeking the imposition of penalties of up to \$37,500 per day of noncompliance. The information you provide may be used by EPA in administrative, civil, or criminal proceedings.

You may consider some of the information EPA is requesting to be confidential. Please be aware that you may not withhold the information on that basis. If you wish EPA to treat the information confidentially, you must advise EPA of that fact by following the procedures outlined in Enclosure A, including providing support for your claim of confidentiality.

If you have information about other parties who may have information which may assist the Agency in its investigation of the Site or may be responsible for the contamination at the Site, that information should be submitted within the timeframe noted above.

This request for information is not subject to review by the Office of Management and Budget ("OMB") under the Paperwork Reduction Act because it is not an "information collection request" within the meaning of 44 U.S.C. §§ 3502(3), 3507, 3512, and 3518(c)(1). See also 5 C.F.R. §§ 1320.3(c), 1320.4, and 1320.6(a). Furthermore, it is exempt from OMB review under the Paperwork Reduction Act because it is directed to fewer than ten persons. 44 U.S.C. § 3502(4), (11); 5 C.F.R. §§ 1320.4 and 1320.6(a).

Instructions on how to respond to the questions are described in Enclosure A. For any questions that require the submission of documents, electronic copies of these documents may be submitted via email if the documents are available in electronic format. However, your response letter, with your original signature, must be submitted in hardcopy. If you choose to submit attachments to your response letter via email, please be clear in both your hardcopy and electronic submittal to identify which documents are being submitted electronically and identify to which EPA questions the electronic attachments correspond. Additionally, EPA reserves the right to require a hard copy of the document in the future. Please return your written response to this request for information, signed by you or a duly authorized official of your company, if applicable, within thirty (30) calendar days of receipt of this letter. Please direct your response to:

Kathi Moore, SFD-7-5
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

Your response should include the appropriate name, address, and telephone number of the person to whom EPA should direct future correspondence in regard to this matter.

We appreciate and look forward to your response to this information request. If you have any questions regarding this information request, please contact me at (415) 972-3271 or by e-mail at moore.kathi@epa.gov. Please direct any legal questions to Sarah Mueller, Assistant Regional Counsel, at (415) 972-3953 or by e-mail at mueller.sarah@epa.gov.

We appreciate and look forward to your prompt response to this information request.

Sincerely,



Kathi Moore, Chief
CERCLA Enforcement Section
Superfund Division

Enclosures (2)
Attachments (2)
Cc: Sarah Mueller, ORC-3

ENCLOSURE A: INSTRUCTIONS AND DEFINITIONS

Instructions

1. Answer Every Question Completely. A separate response must be made to each of the questions set forth in this Information Request. For each question contained in this letter, if information responsive to this Information Request is not in your possession, custody, or control, please identify the person(s) from whom such information may be obtained.
2. Number Each Answer. When answering the questions in Enclosure B, please precede each answer with the corresponding number of the question and subpart to which it responds.
3. Number Each Document. For each document produced in response to this Information Request, indicate on the document, or in some other reasonable manner, the number of the question to which it corresponds.
4. Provide the Best Information Available. Provide responses to the best of Respondent's ability, even if the information sought was never put down in writing or if the written documents are no longer available. You should seek out responsive information from current and former employees/agents. Submission of cursory responses when other responsive information is available to the Respondent will be considered non-compliance with this Information Request.
5. Identify Sources of Answer. For each question, identify (see Definitions) all the persons and documents that you relied on in producing your answer.
6. Continuing Obligation to Provide/Correct Information. If additional information or documents responsive to this Request become known or available to you after you respond to this Request, EPA hereby requests pursuant to CERCLA Section 104(e) that you supplement your response to EPA.
7. Scope of Request. The scope of this request includes all information and documents independently developed or obtained by research on the part of your company, its attorneys, consultants or any of their agents, consultants or employees.
8. Confidential Information. The information requested herein must be provided even though you may contend that it includes confidential information or trade secrets. You may assert a confidentiality claim covering part or all of the information requested, pursuant to Sections 104(e)(7)(E) and (F) of CERCLA, 42 U.S.C. §§ 9604(e)(7)(E) and (F), and Section 3007(b) of RCRA, 42 U.S.C. § 6927(b), and 40 C.F.R. § 2.203(b).

If you make a claim of confidentiality for any of the information you submit to EPA, you must substantiate that claim. For each document, your substantiation must separately address the following points enumerated in 40 C.F.R. § 2.204(e):

- a. The portions of the information alleged to be entitled to confidential treatment;
- b. The period of time for which confidential treatment is desired (e.g., until a certain date, until the occurrence of a specific event or permanently);
- c. Measures taken by you to guard against the undesired disclosure of the information to others;
- d. The extent to which the information has been disclosed to others and the precautions taken in connection therewith;
- e. Pertinent confidentiality determinations, if any, by EPA or other federal agencies and a copy of any such determinations or reference to them; and
- f. Whether you assert that disclosure of the information would be likely to result in substantial harmful effects on your business' competitive position, and, if so, what those harmful effects would be, why they should be viewed as substantial and an explanation of the causal relationship between disclosure and such harmful effects.

To make a confidentiality claim, please stamp or type "confidential" on each page of any confidential responses and any related confidential documents. Confidential portions of otherwise non-confidential documents should be clearly identified. Where applicable, you should also indicate a date, if any, after which the information need no longer be treated as confidential. You must also include the information necessary to substantiate your claim (as described above). Please enclose all material identified as confidential in a separate envelope. For all information not clearly marked as confidential, EPA will consider any confidentiality claim to be waived, and this information may be made publicly available without further notice.

All confidentiality claims are subject to EPA verification and must be made in accordance with 40 C.F.R. § 2.08, which provides in part that you satisfactorily show that you have taken reasonable measures to protect the confidentiality of the information and that you intend to continue to do so, and that it is not and has not been obtainable by legitimate means without your consent.

Definitions

The following definitions shall apply in this information request.

1. The term "you" shall mean and include Newmont USA Limited and its predecessors, successors, assigns, and affiliates, and the officers, managers, employees, contractors, trustees, and agents of any of them.
2. The term "property" shall include all of the following:
 - a. All areas in which you conducted uranium mining, investigation, surveying, or any

other activity related to locating, extracting, transporting or processing uranium ore, from which hazardous substances may have come to be located within the Haystack Mines Site.

3. With respect to an individual, the term “identify” means to provide a name, present or last known business address and business telephone number and affiliation, if any, with your company. If you do not know the individual’s business address and business telephone number, provide the person’s home address and home telephone number.
4. The term “document” includes any written, recorded, computer-generated or visually reproduced material of any kind in any medium in your possession, custody or control or known by you to exist, including originals, all drafts and all non-identical copies.

Information which you submit in response to this Information Request may be disclosed by EPA to authorized representatives of the United States, pursuant to 40 C.F.R. § 2.310(h), even if you assert that all or part of it is confidential business information. The authorized representatives of EPA to which EPA may disclose information contained in your response are as follows:

- (i) TOEROEK Associates, Inc.
EPA Contract Number EP-BPA-11-W-0001

This information may be made available to these authorized representatives of EPA to assist with document handling, inventory and indexing. Pursuant to 40 C.F.R. § 2.310(h), you may submit comments on EPA’s disclosure of any confidential information contained in your response by EPA to its authorized representatives along with the response itself, within the thirty (30) calendar day period in which the response is due to:

Kathi Moore, SFD-7-5
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

ENCLOSURE B: INFORMATION REQUEST QUESTIONS

Directions

Please identify those individuals who assisted in the preparation of this information response. For each individual, provide the following: name, current or last known address and telephone number, dates of employment, and current and former job titles.

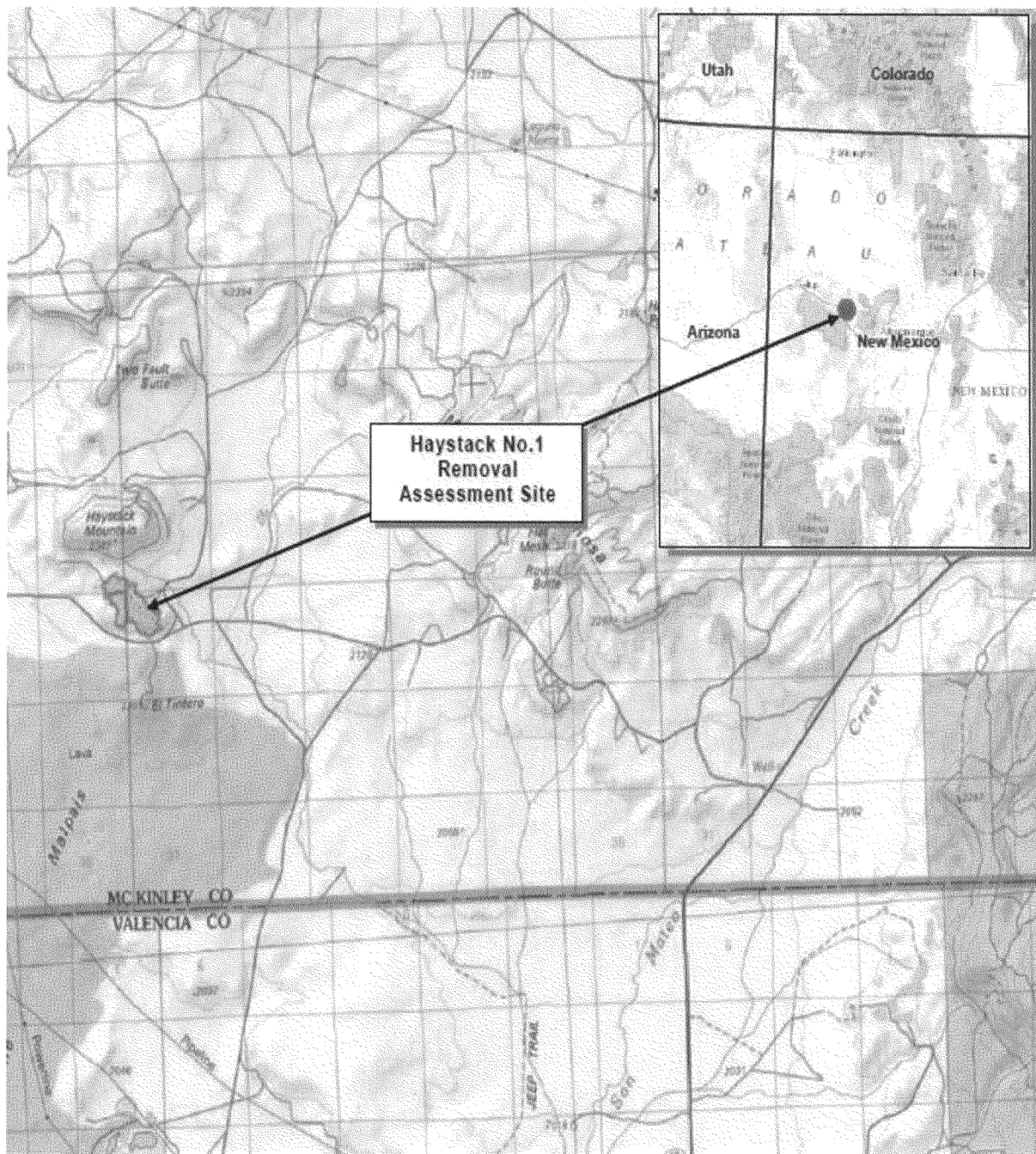
If you have any reason to believe that there may be other persons able to provide a more detailed or complete response to any part of this information request or who may be able to provide additional responsive documents, please identify such persons, including their last known addresses and telephone number.

Questions

1. Please provide any documents related to the ownership of the mineral rights associated with Section 19, Township 13N, Range 10W, in McKinley County, New Mexico, including but not limited to ownership by Newmont USA Limited or its predecessors, successors, or affiliates.
2. Please confirm whether or not Newmont USA Limited or its predecessors, successors or affiliates now own or have owned at any time the mineral rights described in Question 1, and provide any documentation in your possession that identifies what corporate entity owns the mineral rights.
3. Please describe and provide any documents related to operations conducted by Newmont USA Limited or its predecessors, successors, or affiliates related to uranium exploration and or mining at Section 19, Township 13N, Range 10W in McKinley County, New Mexico.
4. Please describe any plans for use of the mineral rights at Section 19, Township 13N, Range 10W in McKinley County, New Mexico, including but not limited to exploration, development, and mining of uranium ore. Please provide any documents associated with such plans.
5. Please describe the corporate relationship between Newmont USA Limited and Santa Fe Pacific Railroad Company, and provide any documents that describe such relationship.

ATTACHMENT 1: SITE MAP

Map



ATTACHMENT 2: EPA Administrative Order, July 29th, 1991

IN THE MATTER OF:

Order No. 91-16

Approximately 640 Acres
of Land Located in
Section 19, Township 13N,
Range 10W of the Bluewater USGS
Quadrangle (A Portion of the
Bluewater Uranium Mining Sites)

ADMINISTRATIVE ORDER
PURSUANT TO SECTION 106
OF THE COMPREHENSIVE
ENVIRONMENTAL RESPONSE,
COMPENSATION, AND
LIABILITY ACT OF 1980
as amended, 42 U.S.C.
Section 9606(a)

Respondents:

The Cerrillos Land Company, the Santa Fe Pacific Railroad Company, and the Atchison, Topeka & Santa Fe Railway Company

I. PREAMBLE

This Administrative Order (Order) is issued on this date to the above-referenced Respondents, pursuant to the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. Section 9606(a), as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99-499 (CERCLA), delegated to the Administrator of the United States Environmental Protection Agency (U.S. EPA) by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, further delegated to the EPA Regional Administrators by U.S. EPA Delegation Nos. 14-14-A and 14-14-B, and further redelegated to the Director, Hazardous Waste Management Division, by Region IX Delegations 1290.41 and 1290.42.

1 The State of New Mexico and the Navajo Nation have been
2 notified of the issuance of this Order as required by Section
3 106(a) of CERCLA, 42 U.S.C. Section 9606(a).

4 This Order requires the Respondents to undertake and com-
5 plete removal activities to abate an imminent and substantial
6 endangerment to the public health or welfare or the environment
7 that may be presented by the actual or threatened release of
8 hazardous substances from the above-referenced Site.

9 **II. FINDINGS OF FACT**

10 Based on available information, including the Administrative
11 Record established in this matter, the U.S. EPA hereby finds:

12 **A. Site Description/Location**

13 The Bluewater Uranium Mining Sites consist of two nearby
14 abandoned mining areas, the Brown-Vandever-Nanabah Mining Sites
15 and the Navajo Desiderio Mine, which are located in the central
16 portion of western New Mexico. The Brown-Vandever-Nanabah Mining
17 Sites are located on four parcels of land, which include two In-
18 dian Allotment parcels, one Federal parcel administered by the
19 Department of Energy, and one privately owned parcel. All of
20 these parcels lie within the Bluewater U.S. Geological Survey
21 (USGS) Quadrangle.

22 The privately owned parcel of land which constitutes one of
23 the four parcels at the Brown-Vandever-Nanabah Mining Sites, as
24 indicated above, is the subject of this Administrative Order is-
25 sued by the U.S. EPA. For ease of reference, the subject parcel
26 will hereinafter be referred to as "the Site" or "the Facility."

27 The Site is located at the foot of Haystack Butte in Section
28 19, Township 13N, Range 10W of the Bluewater Quadrangle, approx-

imately five miles west of Prewitt, New Mexico and 15 miles north of Grants, New Mexico. The elevation of the Site varies from 6900 to 7100 feet above sea level. Haystack Butte, which lies approximately 1/2 mile to the North of the Site, peaks at 7833 feet.

The climate at the Site is semi-arid, with an average annual precipitation of approximately 12 inches, occurring mostly in July and August. The average annual wind velocity is 10 mph.

No surface water exists on or around the Site. However, small arroyos cut the area with general drainage to the south-east. Groundwater aquifers lie far below any of the previously mined areas at the Site. There is no evidence that the groundwater has been affected, to date, by hazardous substances at the Site.

Geology locally consists of exposures of Jurassic Todilto limestone and Entrada sandstone at the northern border of the Site, and Basaltic Malpais to the southeast. Vegetation consists of sparse grassland, bounded approximately 1/2 mile to the north of the Site by pinyon-juniper woodlands. Wildlife species in the area are restricted to birds, reptiles, and small mammals characteristic of the pinyon-juniper and grassland habitats.

In the past, the land at the Site was used primarily for rangeland grazing and uranium mining. Reports indicate that mining operations at the Brown-Vandever-Nanabah Mining Sites were ceased in approximately 1981. Since that time, the land has been utilized primarily for the grazing of sheep and other animals. However, as a result of the previous mining operations at the Site, the topography of the land is still scarred by several

1 large abandoned uranium mine pits. In addition, uranium mine
2 waste, overburden, and piles of protore (low grade uranium ore)
3 remain present on the surface of the land at this time.

4 **B. Site History and Respondents**

5 1. As of 1950, when uranium was first discovered at the Site,
6 the mineral rights to the Site (Section 19, Township 13N, Range
7 10W) were held and controlled by the Santa Fe Pacific Railroad
8 Company (SFPR).

9 2. SFPR owned the mineral rights to the Site for the period
10 from 1951 to the the early 1980's. During this period of time,
11 uranium mining operations were conducted at the Site, as
12 specified in paragraphs 3, 6, 7, 8, 10, and 13 below.

13 3. From November 21, 1950, to September 30, 1952, SFPR con-
14 ducted drilling, sampling, test pitting and other mining opera-
15 tions at the Site.

16 4. According to the Mineral Leasing History and Corporate
17 Chronology attached to a June 18, 1991 letter to EPA from Mr. Tim
18 Leftwich, the Director of Environmental Quality for both the Cer-
19 rillos Land Company (CLC) and the Santa Fe Pacific Minerals Cor-
20 poration (SFPM), the Haystack Mountain Development Company was
21 incorporated on October 15, 1951, as a subsidiary of the
22 Atchison, Topeka & Santa Fe Railway.

23 5. From September 30, 1952 to November 30, 1961, SFPR formally
24 leased the mineral rights to the Site to HMDC.

25 6. From September 30, 1952 to November 30, 1961, HMDC conducted
26 mining operations at the Site pursuant to the above-referenced
27 lease.

1 7. On April 19, 1960, SFPR entered into a separate contract
2 with HMDC for construction work and other work, including the
3 production of uranium ore, at the Site. This contract was ter-
4 minated on December 1, 1961.

5 8. On December 1, 1961, SFPR entered into a similar contract
6 with an individual named Henri T. Dole, for construction work and
7 other work, including mining operations, at the Site. This con-
8 tract remained in effect through December 1, 1967. Information
9 made available to EPA indicates that Henri T. Dole may now be
10 deceased.

11 9. From April 15, 1975 to February 1985, SFPR leased the
12 mineral rights to several portions of the Site to an individual
13 named George Warnock. In this lease agreement, SFPR acknowledged
14 that:

15 a) SFPR was the former owner of the land (including surface
16 rights) at the Site; and

17 b) Although SFPR had previously sold and conveyed its
18 interest in the surface rights to the Site, the company
19 had retained its property interest in the oil, gas, and
20 mineral rights which were associated with that land.

21 10. Pursuant to this lease of Site mineral rights, Mr. Warnock
22 conducted uranium exploration and mining activities at the Site,
23 subject to the payment of both rent and royalties to SFPR, from
24 April 15, 1975 to May 1977.

25 11. In an agreement on May 5, 1977, Mr. Warnock assigned his
26 lease of Site mineral rights to the Todilto Exploration and
27 Development Corporation (TEDC). The Lessor of the Site mineral
28 rights, SFPR, consented to the assignment of the lease to TEDC.

1 12. As evidenced by the signatures on the Assignment of Lease
2 document, George Warnock also served as President of TEDC, and
3 his wife Dorothy served as the Secretary of that company.

4 13. Pursuant to the assignment of the above-referenced lease,
5 TEDC conducted mining operations on a portion of the Site from
6 May 1977 until approximately 1981.

7 14. In 1981, all ongoing mining operations at the Site were
8 ceased.

9 15. On April 27, 1987, HMDC was merged into the Atchison, Topeka
10 and Santa Fe Railway Company.

11 16. According to a July 1, 1991 letter from Mr. Tim Leftwich,
12 the Director of Environmental Quality for the Cerrillos Land Com-
13 pany (CLC) to EPA Region IX, CLC is "the current owner of the
14 mineral estate" for the Site.

15 17. As further indicated in the Corporate Chronology attached to
16 the June 18, 1991 letter from Mr. Leftwich to EPA, CLC was incor-
17 porated on March 21, 1983, as a subsidiary of the newly incor-
18 porated Santa Fe Pacific Minerals Corporation (SFMC). The Santa
19 Fe Pacific Minerals Corporation itself was incorporated on March
20 14, 1983, as a subsidiary of Santa Fe Industries, Inc.

21 18. As indicated in the Mineral Take Off attachment to the June
22 18, 1991 letter from Mr. Leftwich to EPA, the Cerrillos Land Com-
23 pany acquired its present interest in the mineral rights to the
24 Site from SFPR through special warranty deed conveyances in Sep-
25 tember 1983, and in July and October 1986.

26 19. As indicated in the Current Pertinent Structure attachment
27 to the June 18, 1991 letter from Mr. Leftwich to EPA, and con-
28 firmed by Wayne Jarke, the General Counsel for the Santa Fe

1 Pacific Minerals Corporation, in a telephone conversation with
2 EPA representative Linda P. Wandres on July 26, 1991, the
3 Atchison, Topeka and Santa Fe Railway Company, the Santa Fe
4 Pacific Railroad Company, and the Santa Fe Pacific Minerals Cor-
5 poration are now sister subsidiaries of Santa Fe Pacific
6 Properties, Inc. Santa Fe Pacific Properties, Inc. is itself a
7 subsidiary of the Santa Fe Pacific Corporation.

8 **C. Site Characteristics**

9 Several families live and work near the Site. Approximately
10 forty people, including children, live within one quarter mile of
11 the Site. As stated above, the Haystack Butte area, including
12 Section 19, is utilized primarily as grazing land for local sheep
13 herders. At the present time, there are no restrictions or bar-
14 riers to prevent the local population or livestock from gaining
15 access to the abandoned mine areas and mining wastes which remain
16 at the Site. Throughout the year, local residents, sheep, and
17 goats roam freely within the abandoned mine areas. In addition,
18 the Agency for Toxic Substances and Disease Registry (ATSDR) has
19 reported that local children occasionally play on and around the
20 abandoned mine pits and the piles of mine waste at the Site.

21 **D. Incident/Release Characteristics**

22 On October 3, 1990, the Emergency Response Section (ERS) of
23 the U.S. EPA was notified by the ATSDR of potential health
24 hazards which the Agency had determined may be associated with
25 the abandoned uranium mines at the Brown-Vandever-Nanabah and
26 Desiderio Mining Sites in the Bluewater USGS quadrangle.
27 Specifically, ATSDR concluded that the Bluewater Mining Sites may
28 pose a significant health hazard to the local population because

1 of the presence of radioactive mine waste and protore on and
2 about the Sites, physical hazards at the Sites, and the potential
3 for heavy metal contamination in the vicinity of the abandoned
4 mines. As a result of its investigation, ATSDR issued a Public
5 Health Advisory concerning the Bluewater Sites (including the
6 Site subject to this Order) pursuant to Section 104(i)(6)(H) of
7 CERCLA.

8 EPA Region IX's ERS was tasked to assess the present radio-
9 logical and geochemical conditions at the Bluewater Sites, to
10 determine whether an emergency response action was warranted to
11 control the actual or threatened release of hazardous substances
12 at the Sites. On November 15-16, 1990, the ERS staff (assisted
13 by members of the EPA Office of Air and Radiation) conducted a
14 field gamma survey and collected water and soil samples on and
15 about the Brown-Vandever-Nanabah and Desiderio Mining Sites,
16 including the Site which is the subject of this Order.

17 In order to assess the conditions present at the Site sub-
18 ject to this Order, the ERS staff (using standard radiation
19 detection equipment [Ludlum 19]), first obtained background
20 radiation measurements at a distance of 2.5 miles, 1.0 mile and
21 approximately 0.5 mile from the Site. Thereafter, the ERS staff
22 took radiation readings at several sampling locations within the
23 immediate vicinity of the Site (See Attachment A, Preliminary
24 Data). Measurements were taken at both ground level and at waist
25 level. Waist level measurements are indicative of human exposure
26 levels, whereas the contact measurements taken at ground level
27 suggest the emission rate of the radioactive materials from the
28 soil.

1 Ground level background readings obtained by the EPA staff
2 ranged from 11 microroentgens per hour (uR/hr) to 15 uR/hr, while
3 waist level background readings ranged from 11 uR/hr to 13 uR/hr.
4 Within the immediate vicinity of the Site, the net waist level
5 (background subtracted) radiation levels ranged from 20 uR/hr to
6 over 750 uR/hr. On ground contact, the maximum on-Site radiation
7 level was recorded at 1,225 uR/hr. Elevated concentrations of
8 radium (Ra-226/228) and uranium isotopes (U-223/234/235/238) were
9 also detected in soils located on-Site. The maximum levels
10 detected for radioisotopes in surface soils at the Site (within
11 the top 15 centimeters of soil) were recorded for radium, which
12 was measured in excess of 260 picocuries per gram of soil
13 (pCi/g), and for uranium species, which were measured at more
14 than 300 pCi/g. Soil samples which were analyzed for heavy metal
15 contamination did not reveal any significant amount of contamina-
16 tion.

17 **E. Threats to Public Health and Welfare**

18 **1. Removal Cleanup Standard**

19 Radiation is a known carcinogen, mutagen and teratogen.
20 Exposure to elevated gamma radiation is known to cause cancer,
21 cataracts, and shorten the life span of affected individuals. As
22 indicated above, elevated radionuclide levels are present in both
23 the soil and waste materials found at the Site. These radio-
24 nuclides have been found to emit radiation at levels which may
25 present a danger to individuals in the vicinity of the Site.
26 Uranium and several of its decay daughters are alpha emitters.
27 The inhalation of radionuclides that are alpha emitters exposes
28 an affected individual's internal organs to damaging alpha par-

1 ticles. Once ingested, alpha particles become trapped within the
2 body, and can thereby cause severe organ damage as well as cer-
3 tain genetic defects.

4 The National Council on Radiation Protection and Measure-
5 ments (NCRP) Report 91 (1987), "Recommendations on Limits for
6 Exposure to Ionizing Radiation," recommends the adoption of a
7 limit for continuous or frequent exposure to radiation, at a
8 100 mrem/yr effective dose equivalent (EDE) from all radiation
9 sources (including external as well as internal sources). The
10 NCRP report also recommends that a limit of 500 mrem/yr be esta-
11 blished for infrequent or "short term" exposure. In accordance
12 with the above-referenced NCRP Guidelines, EPA's Office of Air
13 and Radiation (OAR) has concurred with Region IX's Action
14 Memorandum for the Bluewater Sites, which recommends that a limit
15 of <100 mrem/yr of excess gamma radiation be adopted as a stan-
16 dard in this case, to ensure that the affected population is not
17 exposed to radiation levels in excess of the 500 mrem/yr effec-
18 tive dose equivalent from all sources.

19 For the purpose of the response action to be conducted at
20 the Site, EPA has estimated that the population in question (on
21 the average) spends two (2) hours per day in areas which have
22 been affected by the mining operations at the Site, for ap-
23 proximately 300 days out of each year. Based on this estimate,
24 it appears that the population and livestock in the immediate
25 vicinity of the Site which are being exposed to gamma radiation
26 levels of 180 uR/hr or greater (165 uR/hr above background) are
27 receiving radiation exposure in excess of the levels recommended
28 by Region IX and the EPA Office of Air and Radiation.

1 The risk level at the Site has been calculated using the follow-
 2 ing formula:

$$\begin{aligned} 3 & (180 \text{ uR/hr} - 15 \text{ uR/hr}) * 2 \text{ hr} * 300 \text{ days/yr} = 99,000 \text{ uR/yr} \\ 4 & 99,000 \text{ uR/yr} = 99 \text{ mR/yr} = 99 \text{ mrem/yr} \end{aligned}$$

5 **F. Threats to the Environment**

6 In addition to the threat which the Site currently poses to
 7 human health, the elevated emissions of gamma radiation from the
 8 radionuclides which are present in the soil and other materials
 9 at the Site may adversely effect the local biota and wildlife.
 10 Moreover, since the land is being utilized primarily for grazing
 11 at the present time, the radionuclides may be entering the food
 12 chain, as the grazing livestock ingest the contaminated biota.
 13 Over a period of time, this food chain link may also have
 14 deleterious consequences for the individuals who frequently eat
 15 animals which have grazed in the vicinity of the Site.

16 **III. CONCLUSIONS OF LAW**

17 Based on the foregoing Findings of Fact, the U.S. EPA has
 18 concluded as follows:

19 **A.** The portion of the Bluewater Uranium Mining Sites which
 20 is the subject of this Order (the "Site"), which is located in
 21 Section 19, Township 13N, Range 10W of the Bluewater Quadrangle,
 22 is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C.
 23 Section 9601(9).

24 **B.** Each named Respondent is a "person" as defined by Section
 25 101(21) of CERCLA, 42 U.S.C. Section 9601(21).

26 **C.** The Cerrillos Land Company is the present "owner" of a
 27 property interest in the Site, as defined by Section 101(20) of
 28 CERCLA, 42 U.S.C. Section 9601(20).

1 D. The Santa Fe Pacific Railroad Company is an "owner" at
2 the time of disposal of a property interest in the Site, as
3 defined by Section 101(20) of CERCLA, 42 U.S.C. Section 9601(20).

4 E. The Atchison, Topeka & Santa Fe Railway Company is a
5 parent and successor corporation to the Haystack Mountain
6 Development Company, and is therefore an "operator" at the time
7 of disposal of the Site, as defined by Section 101(20) of CERCLA,
8 42 U.S.C. Section 9601(20).

9 F. The above-named Respondents are therefore liable persons
10 with respect to the Site, pursuant to Section 107(a) of CERCLA,
11 42 U.S.C. Section 9607(a).

12 G. Radionuclides are "hazardous substances" as defined by
13 Section 101(14) of CERCLA, 42 U.S.C. Section 9601(14), and Sec-
14 tion 302.4 of the National Contingency Plan (NCP), 40 CFR Part
15 300.

16 H. The presence of elevated radionuclide concentrations at
17 the above-referenced Site, and the potential for those substances
18 to migrate, constitutes an actual or threatened "release" of haz-
19 ardous substances into the environment, as defined by Section
20 101(22) of CERCLA, 42 U.S.C. Section 9601(22).

21 IV. DETERMINATIONS

22 Based on the Findings of Fact and Conclusions of Law stated
23 above, the Director, Hazardous Waste Management Division, EPA
24 Region IX, has made the following determinations:

25 A. The actual or threatened release of hazardous substances
26 from the Facility subject to this Order may present an imminent
27 and substantial endangerment to the public health or welfare or
28 the environment.

1 B. Specifically, the conditions present at the Facility
2 constitute a threat to public health or welfare or the environ-
3 ment based upon consideration of the factors set forth in the Na-
4 tional Contingency Plan, at 40 CFR Section 300.415(b). These
5 factors include, but are not limited to, the following:

6 1. **Actual or potential exposure to hazardous substances**
7 **by nearby populations, animals, or food chain:**

8 As indicated above, approximately forty people, including
9 children, reside within an approximate one half mile radius of
10 the Site. If immediate action is not taken to control the
11 release of hazardous substances at the Site, the local population
12 may be exposed to dangerous doses of gamma radiation and elevated
13 concentrations of radionuclides. As indicated in Section II.F.1
14 of this Order, constant or frequent exposure to elevated gamma
15 radiation emitted from radionuclides is known to cause cancer,
16 life span shortening and cataracts in affected individuals.

17 2. **High levels of hazardous substances in soils largely at**
18 **or near the surface that may migrate:**

19 EPA has determined that the soils which are present within
20 the boundaries of the Site contain elevated concentrations of
21 radionuclides. These hazardous substances may migrate from the
22 surface soils at the Site as a result of high winds in the im-
23 mediate vicinity. The inhalation of airborne radionuclides ex-
24 poses the internal organs of exposed persons to damaging alpha
25 particles. Uranium and several of its decay daughters are alpha
26 radiation emitters. Once ingested, an alpha particle becomes
27 trapped within the body and can thereby cause severe organ damage
28 as well as certain types of genetic defects. Radionuclides
present in surface soils may also migrate as a result of their
exposure to flash flood waters and surface runoff. Finally, in-
creased radiation emissions may result from elevated radionuclide
concentrations at the Site. Such radiation is a known car-
cinogen, mutagen and teratogen.

 3. **Weather conditions that may cause hazardous substances**
 to migrate or be released:

 Although the area in the vicinity of the Site is relatively
dry during the majority of the year, the Bluewater District is
subject to severe seasonal thunderstorms, high winds, and flash
flooding. As a result, the mine wastes which remain present on
the surface of the land are slowly being broken down and trans-
ported, by both alluvial and fluvial forces.

1 C. In order to prevent or mitigate immediate and sig-
2 nificant risk of harm to the public health, welfare and the en-
3 vironment, it is necessary that actions be taken immediately to
4 contain and prevent the release and potential release of hazard-
5 ous substances from the Site.

6 D. The actions required by this Order, if properly per-
7 formed, are consistent with CERCLA and the National Contingency
8 Plan (NCP), 40 CFR Part 300, and are necessary and appropriate to
9 protect the public health or welfare or the environment from the
10 release of hazardous substances from the Site.

11 V. ORDER

12 Based upon the foregoing Findings of Fact, Conclusions of
13 Law, and Determinations, and pursuant to Section 106(a) of
14 CERCLA, 42 U.S.C. Section 9606(a), it is hereby Ordered that
15 Respondents undertake the following actions with regard to the
16 Site, under the direction of EPA's On-Scene Coordinator:

17 A. Within twenty-one (21) calendar days after the effective
18 date of this Order, the Respondents shall submit in writing, for
19 EPA review and approval, a Site Stabilization Plan and Schedule
20 (Work Plan). The Work Plan shall provide a concise description
21 of the removal activities which are to be conducted pursuant to
22 this Order, as set forth below. Pursuant to the Work Plan, the
23 Ordered activities shall be implemented and completed in accor-
24 dance with the time frames specified in this Section:

- 25 1. Within thirty-five (35) calendar days after the effective
26 date of this Order, the Respondents shall conduct a
27 field gamma survey to define and delineate all areas
28 within the Site which exceed 180 microroentgens an hour
(uR/hr) (165 uR/hr above background) at ground level.
The Work Plan shall contain specific information on how
the gamma survey will be conducted, grid specification,
the type of instruments planned to be utilized, and the

1 qualifications of the surveyors. All sampling and
2 analysis shall be consistent with the "Removal Program
3 Quality Assurance/Quality Control Interim Guidance:
4 Sampling, QA/QC Plan and Data Validation," EPA OSWER
5 Directive 9360.4-01, dated February 2, 1989.

6 2. Within sixty (60) calendar days after the effective
7 date of this Order, the Respondents shall effectively
8 reduce radiation emissions from all mine waste piles and
9 areas where mining has exposed the uranium rich lime-
10 stone, where recorded gamma emissions have been found to
11 exceed 180 uR/hr at ground level (165 uR/hr above
12 background). The radiation emissions from these piles
13 and mined surfaces shall be reduced to a level below 180
14 uR/hr. The proposed response actions to reduce these
15 radiation emissions must be able to withstand erosion and
16 chemical weathering (revegetation or the equivalent).
17 The Work Plan shall provide adequate information and
18 details on how the gamma radiation levels will be reduced
19 by the proposed action, on specific site operation
20 procedures, on the type of equipment which the Respon-
21 dents plan to utilize during the proposed action, and on
22 the qualifications of the personnel to be employed or
23 otherwise retained by the Respondents to perform the
24 Ordered activities.

25 3. Within sixty (60) calendar days after the effective date
26 of this Order, the Respondents shall post signs in
27 English, Spanish and Navajo warning the local residents
28 of the potential radiological hazards associated with
29 the Site.

30 The Work Plan submitted by the Respondents shall be reviewed
31 by the U.S. EPA, which may approve, disapprove, require revi-
32 sions, or modify the Work Plan. If EPA provides comments to the
33 Respondents on the proposed Work Plan, the Respondents shall in-
34 corporate all of EPA's comments and resubmit the plan to EPA
35 within seven (7) calendar days after receiving any such comments.

36 Once EPA has approved the Work Plan, the Respondents shall
37 promptly commence implementation of the Plan as approved by EPA.
38 Failure of the Respondents to promptly and properly implement all
39 aspects of the Work Plan as approved shall be deemed to be a
40 violation of the terms of this Order.

1 The EPA approved Work Plan shall be deemed to be incor-
2 porated into this Order by reference, and thus, shall be fully
3 enforceable under the terms of this Order.

4 The Work Plan and other documents submitted by the Respon-
5 dents shall demonstrate that the Respondents can properly and
6 effectively conduct the response actions required by this Order.

7 B. Within twenty-one (21) calendar days after the effective
8 date of this Order, the Respondents shall submit in writing, for
9 EPA review and approval, a Site Health and Safety Plan. The Site
10 Health and Safety Plan shall include necessary provisions to
11 protect the health and safety of Site workers and neighboring
12 residents, and shall be approved by a qualified Health Physicist.
13 The Site Health and Safety Plan shall be prepared in accordance
14 with EPA's Standard Operating Safety Guide, dated November 1984,
15 and updated July 1988, and with the Occupational Safety and
16 Health Administration (OSHA) regulations contained in 29 CFR Part
17 120, which are applicable to Hazardous Waste Operations and Emer-
18 gency Response Actions.

19 If EPA provides comments to the Respondents on the Site
20 Health and Safety Plan, the Respondents shall incorporate all of
21 EPA's comments and resubmit the plan to EPA within seven (7)
22 calendar days of receiving any such comments.

23 C. Within thirty-four (34) calendar days after the effective
24 date of this Order, the Respondents shall submit in writing, for
25 EPA review and approval, a Post-Response Sampling Plan to ensure
26 that all gamma radiation emission levels recorded within the
27 boundaries of the Site following the completion of this removal
28

1 action are below the above-referenced limit of 180 uR/hr (165
2 uR/hr above background).

3 D. Within five (5) calendar days following the completion of
4 the initial gamma radiation survey at the Site, the Respondents
5 shall submit to EPA for review and approval copies of the field
6 data which the Respondents have obtained during their initial
7 survey of Site conditions, including a map delineating the survey
8 points, documentation on instrument calibrations, and a summary
9 of the procedures utilized by the Respondents and the findings
10 which they obtained during the initial survey. After EPA has ap-
11 proved the results of the initial gamma survey, the Respondents
12 shall proceed in implementing the remaining tasks specified in
13 the approved Work Plan.

14 E. During the implementation of the Work Plan and the Sam-
15 pling Plan, the Respondents shall provide written weekly summary
16 reports to the EPA On-Scene Coordinator. These weekly reports
17 shall contain a summary of the previous week's activities and
18 planned upcoming events.

19 F. The Respondents shall provide notice to EPA at least
20 forty-eight (48) hours prior to performance of any on-Site work.

21 G. At the conclusion of the Post-Response Sampling acti-
22 vities, the Respondents shall prepare a final report summarizing
23 the work which they have conducted at the Site pursuant to this
24 Order. The final report shall contain, at a minimum: identifica-
25 tion of the Facility; a description of the locations and types of
26 hazardous substances encountered at the Facility upon the initia-
27 tion of work performed under this Order; a chronology and
28 description of the actions performed (including both the

1 organization and implementation of response activities); a list-
2 ing of the resources committed to perform the work under this Or-
3 der (including financial, personnel, mechanical and technological
4 resources); identification of all items that affected the actions
5 performed under the Order, and a discussion of how all problems
6 were resolved; and a presentation of the analytical results of
7 all sampling and analyses performed (including all materials re-
8 lated to the Post-Response gamma survey), and accompanying appen-
9 dices containing all relevant paperwork accrued or used during
10 the action (e.g., Site maps, instrument calibration data,
11 invoices, bills, contracts, permits, and Site personnel
12 information).

13 In addition, the final report shall include an affidavit
14 from a person who supervised or directed the preparation of that
15 report. The affidavit shall certify under penalty of law that
16 based on the affiant's personal knowledge and appropriate in-
17 quiries of all other persons involved in the preparation of the
18 report, the information submitted is true, accurate, and complete
19 to the best of the affiant's knowledge and belief.

20 The final report shall be submitted to EPA no later than
21 fourteen (14) calendar days following the termination of the
22 response action at the Site.

23 H. The Respondents shall retain a contractor which is
24 qualified to undertake and complete the requirements of this
25 Order, and shall notify the U.S. EPA of the name of such contrac-
26 tor, within twenty-one (21) calendar days after the effective
27 date of this Order (within the timeframe specified above for sub-
28 mittal of the Work Plan for Site activities). EPA retains the

1 right to disapprove of any, or all, of the contractors and/or
2 subcontractors which the Respondents may seek to retain. In the
3 event that EPA disapproves of a selected contractor, the Respon-
4 dents shall retain a different contractor to perform the Ordered
5 work within seven (7) calendar days following EPA's disapproval
6 of the Respondents' initial contractor selection.

7 I. Any materials containing hazardous substances, pol-
8 lutants, or contaminants which are removed from the Site pursuant
9 to actions required under this Order shall be disposed of or
10 treated at a facility approved by the EPA On-Scene Coordinator,
11 and in accordance with the requirements of the Resource Conserva-
12 tion and Recovery Act of 1976 (RCRA), 42 U.S.C. Section 9601, et
13 seq., as amended, the U.S. EPA Revised Off-Site Policy, and all
14 other applicable Federal, State, and local requirements.

15 J. The Respondents shall designate a Project Coordinator for
16 the work to be performed at the Site. To the greatest extent
17 possible, the Project Coordinator shall be present on-Site, or be
18 otherwise readily available, during the performance of response
19 activities at the Site. The U.S. EPA has designated Robert E.
20 Bornstein as its On-Scene Coordinator (OSC) for the Site. All
21 relevant correspondence, reports, and documents should be sub-
22 mitted to the EPA On-Scene Coordinator at the following address:

23 Robert E. Bornstein, OSC
24 Emergency Response Section (H-8-3)
25 U.S. EPA
26 Region IX
27 75 Hawthorne Street
28 San Francisco, CA 94105

The On-Scene Coordinator and the Respondents' Project Coordinator
shall be responsible for overseeing the implementation of this

1 Order. To the maximum extent possible, and unless otherwise
2 specified in this Order, communication between the Respondents
3 and the U.S. EPA, and all documents, reports, approvals, and cor-
4 respondence concerning the response activities to be performed
5 pursuant to this Order, shall be directed through the EPA On-
6 Scene Coordinator and the Respondents' Project Coordinator.

7 K. The U.S. EPA and the Respondents shall each have the
8 right to change their designated Coordinator for the response ac-
9 tivities conducted at the Site. The U.S. EPA shall notify the
10 Respondents, and the Respondents shall notify EPA, as early as
11 possible before such a change is made. However, in no event
12 shall less than 24 hours' notice be provided for such a change.
13 While verbal notification may be provided initially for a change
14 in the designated Coordinator under this provision, such
15 notification shall be confirmed promptly in writing.

16 L. The U.S. EPA On-Scene Coordinator shall have the
17 authority vested in an On-Scene Coordinator by the NCP, 40 CFR
18 Part 300, as amended, including the authority to halt, conduct,
19 or direct any work required by this Order, and to direct any
20 other response action to be undertaken by the U.S. EPA or the
21 Respondents at the Facility subject to this Order. All instruc-
22 tions given by the EPA On-Scene Coordinator or his designated
23 alternate shall be binding upon the Respondents as long as those
24 instructions are not clearly inconsistent with the provisions of
25 the National Contingency Plan.

26 M. No extensions shall be granted to the timeframes set
27 forth for the performance of specific response actions pursuant
28 to this Order without sufficient cause. All such extensions must

1 be requested by the Respondents in writing, and shall not be
2 deemed to be accepted unless EPA has approved such an extension
3 in writing.

4 N. To the extent that the Facility subject to this Order, or
5 other nearby areas where work must be performed pursuant to this
6 Order, is owned, leased, or possessed by person(s) other than the
7 Respondents, it is the responsibility of the Respondents to ob-
8 tain access to and use of any such areas, in order to carry out
9 the terms of this Order. Accordingly, it is the responsibility
10 of the Respondents to obtain all necessary access agreements to
11 enable them to perform the Ordered work at the Site. In the
12 event that the Respondents are unable to obtain access to por-
13 tions of the Site or surrounding lands, despite having used their
14 best efforts to do so, the Respondents shall immediately notify
15 the U.S. EPA.

16 O. The Respondents shall provide U.S. EPA employees, con-
17 tractors, agents, and other representatives with unrestricted ac-
18 cess to the Facility at all reasonable times, and shall permit
19 all such persons to be present on and to move freely in the area
20 subject to this Order, to conduct inspections on the subject
21 land, including taking photographs and videotapes of the
22 Facility, to perform necessary cleanup and site stabilization
23 work, to take samples at the Site, to monitor the work performed
24 by Respondents pursuant to this Order, and to conduct other such
25 activities as the U.S. EPA determines are necessary at the Site.
26 Nothing in this Order shall limit any access rights that EPA or
27 other governmental agencies may have pursuant to law.

28

1 P. Nothing contained herein shall be construed to prevent
2 the U.S. EPA from seeking legal or equitable relief to enforce
3 the terms of this Order, or from taking other legal or equitable
4 action as it deems necessary and appropriate, or from requiring
5 the Respondents in the future to perform additional response
6 activities pursuant to CERCLA, 42 U.S.C. Section 9601, et seq.,
7 or any other applicable law.

8 Q. If any provision of this Order is deemed to be invalid or
9 unenforceable, the balance of the Order shall remain in full
10 force and effect.

11 VI. COMPLIANCE WITH OTHER LAWS

12 The Respondents shall comply with all applicable federal,
13 state and local laws and regulations in carrying out the terms of
14 this Order. As indicated above, all hazardous substances removed
15 from the Site must be handled in accordance with the Resource
16 Conservation and Recovery Act of 1976, 42 U.S.C. Section 6921, et
17 seq., the regulations promulgated under that Act, and Section
18 121(d)(3) of CERCLA, 42 U.S.C. Section 9621(d)(3).

19 VII. ENDANGERMENT DURING IMPLEMENTATION

20 The Director, Hazardous Waste Management Division, EPA
21 Region 9, may determine that acts or circumstances (whether re-
22 lated to or unrelated to this Order) may endanger human health,
23 welfare or the environment, and as a result of this determina-
24 tion, may order the Respondents to stop further implementation
25 of this Order until the endangerment is abated.

26 VIII. GOVERNMENT NOT LIABLE

27 The United States Government and its employees and other
28 representatives shall not be liable for any injuries or damages

1 to persons or property resulting from the acts or omissions of
2 the Respondents, their employees, contractors, or other represen-
3 tatives caused by carrying out this Order. For the purposes of
4 this Order, the United States Government is not a party to any
5 contract with the Respondents.

6 **VIX. PENALTIES FOR NONCOMPLIANCE**

7 A. The Respondents are advised that pursuant to Section
8 106(b) of CERCLA, 42 U.S.C. Section 9606(b), a willful violation
9 or failure or refusal to comply with this Order may subject the
10 Respondents to a civil penalty of up to \$25,000 per day for each
11 day in which the violation occurs or failure to comply continues.
12 Failure to comply with this Order, or any portion thereof,
13 without sufficient cause may also subject the Respondents to
14 liability for punitive damages of up to three times the total
15 cost incurred by the United States as a result of the Respon-
16 dents' failure to take proper response action with regard to the
17 Site, pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. Section
18 9607(c)(3).

19 B. EPA may take over the response action at any time if EPA
20 determines that the Respondents are not taking appropriate action
21 in accordance with this Order. EPA may order additional actions
22 as it deems necessary in order to protect the public health, wel-
23 fare, or the environment from the release of hazardous substances
24 at the Site. In this regard, the Respondents are advised that
25 they may be found to be liable under Section 107(a) of CERCLA, 42
26 U.S.C. Section 9607(a), for any and all costs incurred by the
27 government in performing such additional response actions at the
28 Site.

X. OPPORTUNITY TO CONFER

With respect to the actions required above, the Respondents may, within seven (7) calendar days following the issuance of this Order, request a conference with the U.S. EPA to discuss the provisions of the Order. Any such conference shall be held within fourteen (14) calendar days from the date of the Respondents' request, unless the timeframe for the conference has been extended by mutual agreement of the parties. At any conference held pursuant to the Respondents' request, the Respondents may appear in person, or be represented by an attorney or other representative. If any Respondent desires such a conference, the Respondent shall contact Linda P. Wandres, Assistant Regional Counsel, at (415) 744-1359, within the timeframe stated above.

If such a conference is held, Respondents may present any evidence, arguments, comments, or objections which they may have regarding this Order, its applicability to the Respondents, any factual determinations upon which the Order is based, the appropriateness of any action which the Respondents are being ordered to perform, or any other relevant and material issue regarding the Order. Any such evidence, arguments, comments, or objections should be reduced to writing and submitted to the U.S. EPA within seven (7) calendar days following the scheduled conference.

XI. PARTIES BOUND

The provisions of this Order and the directions of the U.S. EPA On-Scene Coordinator shall apply to and are binding upon the Respondents, their officers, directors, agents, employees, contractors, successors, and assigns.

1 **XII. NOTICE OF INTENTION TO COMPLY**

2 On or before three (3) calendar days of receipt of this Or-
3 der, the Respondents shall provide notice, verbally or in writ-
4 ing, to U.S. EPA stating their intention to comply with all of
5 the terms set forth in this Order. Verbal notification must be
6 followed in writing within two (2) calendar days. Such written
7 notice shall be provided to the Director, Hazardous Waste Manage-
8 ment Division, at the following address:

9 Jeff Zelikson, Director
10 Hazardous Waste Management Division (H-1)
11 United States Environmental Protection Agency
 75 Hawthorne Street
 San Francisco, CA 94105

12 In the event that any Respondent fails to provide such notice,
13 that Respondent shall be deemed not to have complies with the
14 terms of this Order.

15 **XIII. RECORD RETENTION**

16 The Respondents shall retain copies of all records and files
17 which relate to hazardous substances found on the Site for six
18 (6) years following the completion of the activities required by
19 this Order. The Respondents shall further make such records and
20 files available to the U.S. EPA prior to the termination of the
21 removal activities to be performed pursuant to this Order.

22 **XIV. ACCESS TO ADMINISTRATIVE RECORD**

23 The Administrative Record which has been compiled by EPA in
24 connection with this matter, and which supports the selection of
25 the response action, is available for review on normal business
26 days between the hours of 9:00 a.m. and 5:00 p.m., in the Office
27 of Regional Counsel, United States Environmental Protection
28

1 Agency, Region IX, 75 Hawthorne Street, San Francisco, California
2 94105. In addition, a copy of the Administrative Record will be
3 made available within sixty (60) calendar days following the in-
4 itiation of response activities pursuant to this Order in a
5 designated public repository within the vicinity of the Site.
6 Please contact Linda P. Wandres, the EPA Assistant Regional Coun-
7 sel assigned to this matter, at (415)-744-1359 if you wish to
8 review the Administrative Record in this case. A preliminary in-
9 dex of the Administrative Record is attached to this Order
10 (Attachment B) for your review.

11 **IV. EFFECTIVE DATE**

12 Notwithstanding any conferences requested pursuant to the
13 provisions of this Order, this Order shall be effective upon the
14 date of execution by the Director, Hazardous Waste Management
15 Division, EPA Region IX, and all times for performance shall be
16 calculated from that date. If a conference is requested by the
17 Respondents, the Order shall be effective on the seventh (7th)
18 calendar day following the date of the conference, unless EPA has
19 agreed in writing to modify the effective date of the Order.

20 IT IS ORDERED on this 29th day of July 1991.

21 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

22 By: Jeff Zelikson
23 Jeff Zelikson, Director
24 Hazardous Waste Management Division
25 United States Environmental Protection Agency
26 Region IX
27
28

1 Contacts:

2 Robert E. Bornstein
3 On-Scene Coordinator
4 Emergency Response Section (H-8-3)
5 United States Environmental Protection Agency
6 Region IX
7 75 Hawthorne Street
8 San Francisco, CA 94105
9 (415) 744-2298

10 William J. Weis III
11 Investigations and Enforcement
12 Emergency Response Section (H-8-3)
13 United States Environmental Protection Agency
14 Region IX
15 75 Hawthorne Street
16 San Francisco, CA 94105
17 (415) 744-2297

18 Linda P. Wandres
19 Assistant Regional Counsel
20 Office of Regional Counsel (RC-3)
21 United States Environmental Protection Agency
22 Region IX
23 75 Hawthorne Street
24 San Francisco, CA 94105
25 (415) 744-1359

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ATTACHMENT A
GAMMA RADIATION SURVEY DATA
BROWN-VANDEVER MINE SITE, NAVAJO NATION
SECTION 19

NOVEMBER 14-15, 1990

Operator - Collen Petullo Recorder - Robert Bornstein
Instrument ID# Calibration date Calibration Source
1 Ludlum 19 452663 11-08-90 Ra-226
2 Bicron 825481 10-15-90 Cs-137
3 Ludlum 12 140830 11-08-90 Pu-239, Sr-90
Pancake

Date 11/14/90 SECTION 19

Inst.	Time	Station	Ground	Waist	Comments
1 3	0900 0903	Background1	11 uR/hr 100 cpm	11 uR/hr 100 cpm	2.5 mi from site.
1 3	0908 0910	Background2	11 uR/hr 100 cpm	11 uR/hr 100 cpm	1.0 mi from site.
1	0930	Brown Home	13 uR/hr	14 uR/hr	stage area
1 2	1000 1001	Station 1	35 uR/hr 25 urem/hr	36 uR/hr 25 urem/hr	Center of dirt road
1 2	1003 1004	Station 2	130 uR/hr 70 urem/hr	135 uR/hr 60 urem/hr	near tree
1 2	1007 1008	Station 3	90 uR/hr 50 urem/hr	N/A N/A	contact on ground
1 2	1010 1011	Station 4	115 uR/hr* 75 urem/hr	100 uR/hr # 50 urem/hr	
1 2	1015 1017	Station 5	130 uR/hr 85 urem/hr	145 uR/hr 60 urem/hr	
1 2	1019 1020	Station 6	1200 uR/hr 800 urem/hr	800 uR/hr 400 urem/hr	In pit zone
1 2	1028 1033	Station 7	40 uR/hr 20 urem/hr	44 uR/hr 25 urem/hr	Away from pit area
1 2	1040 1044	Station 8	150 uR/hr 90 urem/hr	140 uR/hr 72 urem/hr	

Table 1. (Continued)

Inst.	Time	Station	Ground	Waist	Comments
1	1055	Station 9	190 uR/hr	170 uR/hr	
2	1057		120 urem/hr	90 urem/hr	
1	1105	Station 10	1250 uR/hr	800 uR/hr	open area
2	1108		750 urem/hr	350 urem/hr	
1	1113	Station 11	400 uR/hr	200 uR/hr	
2	1115		300 urem/hr	150 urem/hr	
1	1118	Station 12	600 uR/hr	500 uR/hr	
2	1120		500 urem/hr	300 urem/hr	
1	1122	Station 13	500 uR/hr	500 uR/hr	
2	1124		250 urem/hr	400 urem/hr	
1	1127	Station 14	600 uR/hr	700 uR/hr	
2	1128		300 urem/hr	300 urem/hr	
1	1134	Station 15	230 uR/hr	280 uR/hr	
2	1136		150 urem/hr	150 urem/hr	
1	1140	Station 16	700 uR/hr	600 uR/hr	
2	1141		300 urem/hr	250 urem/hr	
1	1150	Station 17	80 uR/hr	120 uR/hr	
2	1151		40 urem/hr	35 urem/hr	
1	1155	Station 18	90 uR/hr	65 uR/hr	
2	1156		50 urem/hr	35 urem/hr	

SAMPLE LOCATIONS, BROWN-VANDEVER MINE SITE

SECTION 19

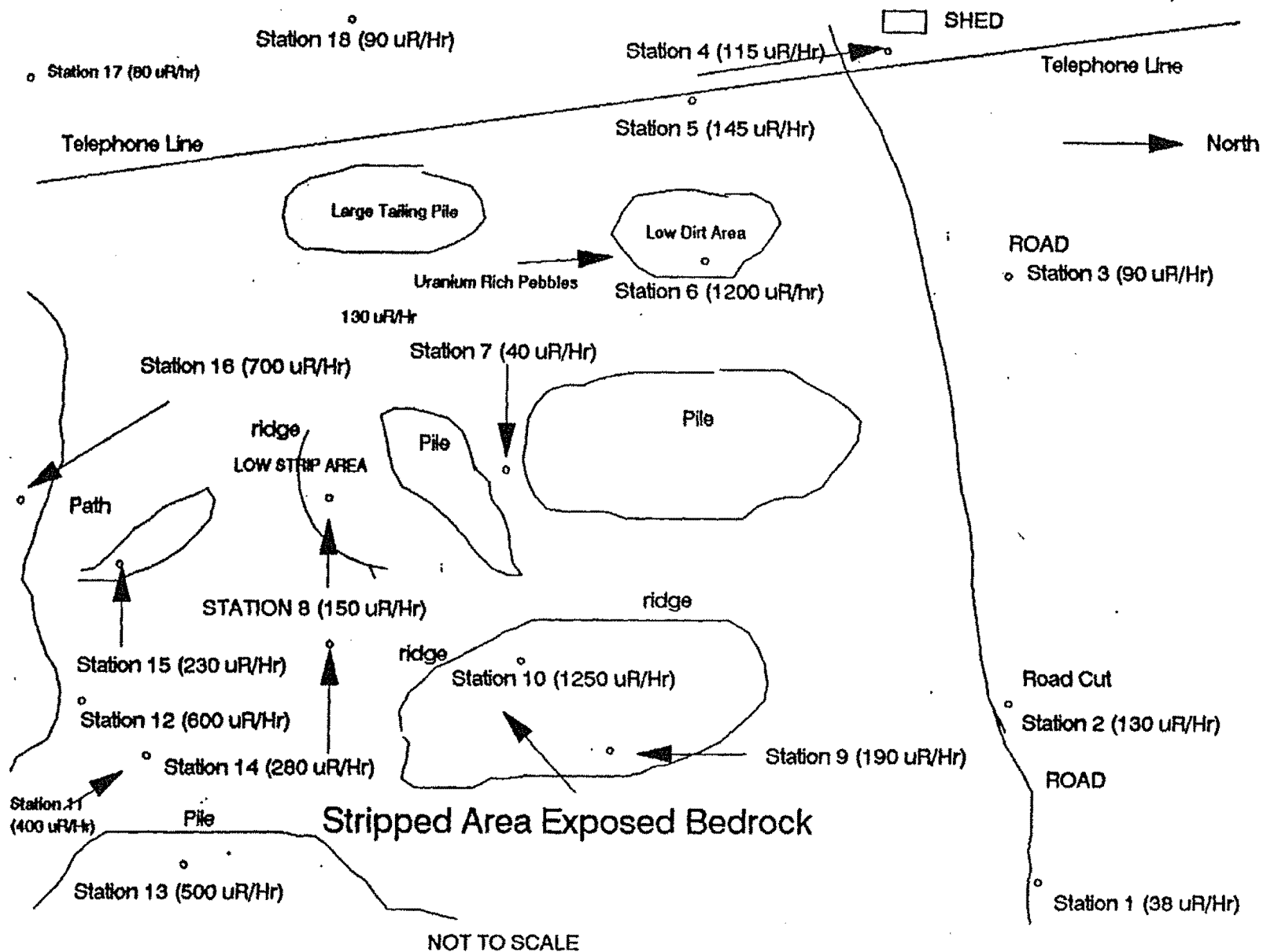


Figure 5. Section 1 B-V.

Preliminary Index to the Administration Record

<u>AUTHOR</u>	<u>ORGANIZATION AND SUBJECT</u>
1) Patrick Molloy	Navajo Nation Superfund: Preliminary Assessment for the Navajo-Desiderio Group Uranium Mines. April 1, 1990.
2) Patrick Molloy	Navajo Nation Superfund: Preliminary Assessment for the Brown Vandever Uranium Mines. April 6, 1990.
3) Robert Bornstein	U.S. Environmental Protection Agency: Navajo-Brown Vandever and Navajo Desiderio Uranium Mining Areas Preliminary Assessment Workplan. November. 7, 1990.
4) Robert C. Williams	Agency for Toxic Substances and Disease Registry (ATSDR): Public Health Advisory Navajo-Brown Vandever and Navajo Desiderio Uranium Mining Areas. November 21, 1990.
5) Robert Bornstein	U.S. Environmental Protection Agency: The Radionuclide, Metal and Gamma Survey Data Package. January 29, 1991.
6) Sharon Seidel	U.S. Environmental Protection Agency: Navajo Bluewater Site-Preliminary Risk Assessment. May 30, 1991.

Miscellaneous Documents

- 1) Various Aerial Photographs, USGS Topographical maps, BLM Surface Mineral Management Maps, and BIA Realty Maps.

Guidance Documents

- 1) Guidance Document: Superfund Removal Procedures #3, OSWER #9360.0-038, 02/01/88.
- 2) Guidance Document: Removal Cost Management Manual (Secondary Reference), OSWER #9360.0-028, 04/01/88.
- 3) Guidance Document: Land Disposal Restrictions, 08/11/87.
- 4) Guidance Document: Emergency Response Cleanup Services Contracts (ERCS), Users' Manual, October 1983, 10/01/83.

- 5) Guidance Document: National Oil & Hazardous Substances Pollution Contingency Guidance, Part 300, 40 CFR CH.1 (7/1/85 Edition), pp. 664 - 755, 07/01/85.
- 6) Guidance Document: Superfund Amendments & Reauthorization Act of 1986 (SARA), 10/17/86.
- 7) Guidance Document: Interim Guidance on Administrative Records for Selection of CERCLA Response Actions, OSWER 9833.3A, 03/01/89.
- 8) Guidance Document: Superfund LDR Guide #7: Determining When Land Disposal Restrictions (LDRs) are "Relevant and Appropriate" to CERCLA Response Actions, OSWER 9347.3-08FS, 12/01/89.
- 9) Technical Assistance Team Report from Preliminary Assessment
- 10) The National Council of Radiation Protection and Measurements (NCRP) Report 91 (1987), "Recommendations on Limits for Exposure to ionizing Radiation."